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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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08/895,886 07/17/97 TANAKA A 500.31108CCZ

EXAMINER

NGUYEN, H

ART UNIT

PAPER NUMBER

2785

DATE MAILED:

04/20/98

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This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

### OFFICE ACTION SUMMARY

Responsive to communication(s) filed on \_\_\_\_\_

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire — 3 — month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 18-36 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 18-36 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on 7/17/97 is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of Reference Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

1. References cited by applicant which are USs/4464747, 4870643, 4942579, 5233618, 5495572 and JP/1-250128, JP/2-135555, EP/0541992, EP/0546826, R.Attar et al' publication and G.Copeland et al' publication have been considered and are hereby made of record.
2. The proposed drawing changes submitted on 7/17/97 have been approved by the examiner.
3. Claims 18-36 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 18-36 of U.S. Patent No. 5,495,572. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between the claim set (18-36) of this instant application and the claim set (1-19) of the US patent 5,495,572, would not make the two claim sets be unobvious. It would not because the claim set of this instant application, claim 18 as an example, requires that the "storage units" have stored therein divided data while the claim set of the US patent, claim 1 as an example, requires that the data storage means (which is equivalent to the storage units) is for storing divided data in parallel. Since claim 18 or the claim set of this instant application is directed to an apparatus/system claim set, the limitation "for storing divided data in parallel" would have been an obvious limitation concerning how the data is stored in the

storage units/storage means which is related to a method of storing divided data which have not added any patentable weight to the structure of the "reconstruction system" claimed. It should be noted that the claim language allow one of ordinary skill in the art to read that the storage units in this instant application include storage unit(s)/spare storage unit (s) for storing ECC data and for storing reconstructed divided data.

4. The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinct from claims in a first patent. *In re Vogel*, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R. § 1.78(d).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoa Nguyen, whose telephone number is (703) 305-9687. The examiner can normally be reached on Monday through Friday, from 9.30 A.M to 6.00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel, can be reached on (703) 305-9713. The fax phone number for this Group is (703) 305-9724.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3800.

*H. Nguyen*  
HOA T. NGUYEN  
PRIMARY EXAMINER  
AU 2785